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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,648	07/29/2002	Zhuning Ma	J6547 (c)	3103

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UNILEVER
PATENT DEPARTMENT
45 RIVER ROAD
EDGEWATER, NJ 07020

EXAMINER

DODSON, SHELLEY A

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 08/25/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/089,648

Applicant(s)

MA ET AL.

Examiner

SHELLEY A. DODSON

Art Unit

1616



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE(3) MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on PRELIMINARY AMENDMENT FILED APRIL 01, 2002
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 04 6) ☐ Other:

DETAILED ACTION

Claims 1-16 are pending in this application filed april 01, 2002.

Applicant's claims are directed toward antiperspirant compositions comprising microemulsions.

Claim Rejections - 35 USC § 112

15.

Claims 1-16 are rejected under 35 USC § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-16 of the above stated claims are viewed as indefinite because of applicant's use of the phrase "characterized in that". It is not readily apparent to this Examiner what applicant intends by said phrase. The Examiner suggests "comprising, consisting or consisting essentially of" as alternative language.

Claims 7 and 15 of the above stated claims are further viewed as indefinite because a broad range or limitation together with a narrow range or limitation that falls within the broad range or

limitation (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. Note the explanation given by the Board of Patent Appeals and Interferences in Ex parte Wu, 10 USPQ2d 2031, 2033 (Bd. Pat. App. & Inter. 1989), as to where broad language is followed by "such as" and then narrow language. The Board stated that this can render a claim indefinite by raising a question or doubt as to whether the feature introduced by such language is (a) merely exemplary of the remainder of the claim, and therefore not required, or (b) a required feature of the claims. Note also, for example, the decisions of Ex parte Steigewald, 131 USPQ 74 (Bd. App. 1961); Ex parte Hall, 83 USPQ 38 (Bd. App. 1948); and Ex parte Hasche, 86 USPQ 481 (Bd. App. 1949). In the present instance, claim 7 recites the broad recitation of an aqueous phase present at about 1% to about 60%, and the claim also recites a preferred and a most preferred amount of said aqueous phase which is the narrower statement of the range/limitation. Additionally, in the present instance, claim 15 recites the broad recitation of an amount of cationic quaternary ammonium surfactant and the claim also recites a preferred and a most preferred amount of said aqueous phase which is the narrower statement of the range/limitation.

Additionally, claim 7 is further viewed as indefinite and confusing because of line 1, the word "cit" before the word "said". It is not apparent what is intended. Perhaps this is a typographical error. Clarification is necessary in all of the above stated matters.

Claim Rejections - 35 USC § 102

16.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

17.

Claims 1-12 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Benfatto, USP 5,487,887, cited and supplied by applicant.

Benfatto discloses roll-on antiperspirant compositions comprising antiperspirant actives, water emollients, surfactants and cyclodimethicone. Note column 3. Benfatto discloses that the

water phase comprises about 35 to 60 weight percent of water. Note column 3. In column 4, Benfatto also discloses that other active ingredients may also be present, specifically water soluble polymers. In column 2, Benfatto further discloses that the antiperspirants may also contain surfactants. Benfatto discloses each and every aspect of the invention as claimed by applicant in the instant case.

Claim Rejections - 35 USC § 103

18.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

19.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Benfatto, USP 5,487,887, cited and supplied by applicant in view of Curry et al. USP 3,920,807.

Benfatto discloses roll-on antiperspirant compositions comprising antiperspirant actives, water emollients, surfactants and cyclodimethicone. Note column 3. Benfatto discloses that the water phase comprises about 35 to 60 weight percent of water. Note column 3. In column 4, Benfatto also discloses that other active

ingredients may also be present, specifically water soluble polymers. In column 2, Benfatto further discloses that the antiperspirants may also contain surfactants. Benfatto discloses each and every aspect of the invention as claimed by applicant in the instant case with the exception of the specific cationic quaternary ammonium surfactant.

Curry et al. disclose antiperspirant and deodorant compositions. In column 5, lines 6 through 36, Curry further discloses that cationic surfactants are employed and specifically quaternary ammonium salts. It would have been obvious to one of ordinary skill in this art at the time the invention was made to have employed the surfactants of Curry into the compositions of Benfatto in view of the teaching of both Benfatto and Curry that cationic surfactants are notoriously employed in antiperspirant compositions. This is in the absence of any clear showing of unexpected results attributable to applicant's specific choice of surfactant.

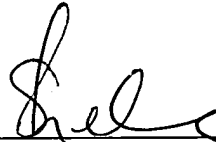
20.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley A. Dodson whose telephone number is (703) 308-2445. The examiner can normally be reached on Monday-Thursday from 7:30 a.m. to 5:00 p.m. The examiner can also be reached on alternate Fridays.

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The fax phone number for the organization where this application or proceeding is assigned is (703) 308-7922. A facsimile center has been established in Crystal Mall 1, Room 7C11. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. This new location should be used in all instances when faxing any correspondence numbers to Group 1600. The Patent examining Fax Center telecopier numbers are (703) 872-9306 and (703) 308-4556. Use of the new Crystal Mall 1 Center will facilitate rapid delivery of materials to the Group. The faxing of all papers must conform with the notice published in the Official Gazette, 109 O.G. 30 (November 15, 1989).



Shelley A. Dodson
Primary Examiner
Art Unit 1616

August 22, 2003